

Job Applications



Is Your Application Legal?

Think about it! Questions that are not job-related, such as where a person was born, marital status, what kind of transportation the person uses, etc., give you absolutely no help in making the best hiring decision. If you ask these types of questions, you are setting yourself up for discrimination claims.

The key to lawful employment inquiries is to ask only about those areas which will provide information about the person's ability to do the job, with reasonable accommodation. Do not assume that applications are legal because you bought them at a reputable store. You are responsible for the legality of your applications and keeping them updated as laws change. There are currently cases pending with the Montana Human Rights Commission concerning discrimination and illegal applications. More and more applicants are asserting their rights...now is a good time to closely scrutinize your application.



You can require additional materials be submitted with your application as appropriate, such as: resumes; transcripts, licenses and certificates (or copies); and answers to supplemental questions.

What Are Supplemental Questions ???

Supplemental questions are inexpensive tools employers can use to screen large numbers of applicants quickly and consistently. Answers are screened against suggested responses. Applications without completed supplements can be eliminated. Based on ratings, the applicants can be grouped, for example: best qualified, qualified, and did not meet minimum qualifications. Then, additional tools, such as job-related testing (typing, 10-key, written tests, agility, etc.), interviews and reference checks can screen the best qualified.

- Develop questions and determine acceptable answers **before** recruiting that will provide the kind of information you are seeking.
- Ask questions about specifics – job duties, knowledge, skills and abilities found in your job description. Questions about past experience rather than theoretical questions usually result in more valuable responses.
- Devise a rating scale, assigning an appropriate weight to each question relative to the importance of the duty being assessed.

Recommendations for writing supplemental questions include the following: limit to 3-5 questions for most jobs; limit responses to no more than 300 words for most questions; let applicants know if their written communication skills will be evaluated; and avoid overly specific, in-house terminology or procedures in suggested responses.

Pre-Employment Inquiries

Referenced from the Employment Relations Division, Department of Labor

Administrative Rules of Montana 24.9.1406

(1) Any pre-employment inquiry made in connection with prospective employment which elicits information regarding race, color, national origin, religion, creed, physical or mental disability, age, sex, marital status, or in the case of government employment, political beliefs, shall raise suspicion of

intent to unlawfully discriminate except when:

*(a) the inquiry is required for implementation of a bona fide lawful affirmative action plan,
(b) the inquiry is required by court ordered or other government reporting or record-keeping requirements, or*

(c) in the case of an inquiry concerning age, physical or mental disability, marital status or sex, the reasonable demands of the position (bona fide occupational qualifications) require an age, physical or mental disability, marital status or sex distinction.

(2) Whether or not any pre-employment inquiry is actually unlawful depends upon whether the inquiry was intended to be used or was used to unlawfully discriminate. The following pre-employment inquiries may raise a suspicion that the employer intends to use the information to unlawfully discriminate and, therefore, should not be asked at any time during the hiring process, including, but not limited to, on application forms and during interviews. The list contains suspect pre-employment inquiries followed, when appropriate, by example of lawful inquiries regarding the same information.

(a) General inquiry regarding race, color, national origin, religion, creed, physical or mental disability, age, sex, or marital status and, in the case of governmental employers only, political beliefs.

(b) Inquiry regarding original name. It is lawful to inquire regarding change of name for purpose of checking employment and education records.

(c) Inquiry regarding residency which requests information indicating birthplace or place of foreign citizenship, former or present. It is lawful to inquire regarding present address, previous address in the US and duration of residency in a particular city, county or state.

(d) When age is a bona fide occupational qualification, an inquiry which requires that age be proven by birth certificate or baptismal record. When age is a bona fide occupational qualification, it is lawful to require that age be proven by record which does not indicate national origin, ancestry or religion.

(e) Inquiry regarding skin, hair, or eye color.

(f) Requirement of a photograph or a request for one, at the applicant's option.

(g) Inquiry regarding military experience outside the US armed forces.

(h) Inquiry regarding criminal arrests. It is lawful to inquire regarding criminal convictions.

(i) Inquiry regarding native language, or the manner in which a foreign language was acquired. It is lawful to inquire regarding foreign languages spoken or degree of fluency.

(j) General inquiry regarding membership in organizations. It is lawful to inquire regarding membership in organizations the names of which do not indicate race, color, national origin, religion, creed, physical or mental disability, age, sex, or marital status. Additionally, government employers should not inquire regarding membership in organizations the names of which indicate political beliefs.

(k) Inquiry regarding names of relatives.

(l) Inquiry regarding garnishments records

(m) General inquiry regarding physical or mental condition. It is lawful to make necessary and job-related inquiries regarding specific physical or mental conditions required by the reasonable demands of the position.

(n) Inquiry regarding pregnancy or childbearing plans.

(o) Inquiry of applicants of only one sex regarding childcare arrangements.

(p) Inquiry regarding citizenship.

(q) Inquiry regarding height and weight.

(3) Information necessary for tax, insurance, social security, compliance with garnishment or immigration laws or other legitimate business purposes may be obtained after employment.

Let Applications and Job Descriptions Help



Complete job descriptions and applications that comply with Americans with Disabilities Act (ADA) allow applicants to self-screen and eliminate the need to ask questions which discriminate.

Clearly state your requirements as an essential function in the job description. For example, some essential functions might be:

- Requires extensive overnight travel (or overtime, weekends).
- Requires standing for long periods of time.
- Requires regular attendance.
- Requires ability to lift 50 lbs regularly.

Then, on your application ask, “Can you perform the essential functions of the job you are applying for, with or without reasonable accommodation?”

Also to comply with ADA, it’s a good idea to make a statement on your application such as, “If you require reasonable accommodation to ensure full participation in our recruitment and selection process, please attach a description of the desired accommodation.”

To avoid having more than one application for different positions with different requirements you can: 1) cross out areas that aren’t relevant to a particular job or 2) use wording in your application that says, “If required (see job description) for the position for which you are applying, do you have...?”

Consider using a signature/release statement such as: “My signature below certifies that all information contained in this application is true, correct and complete to the best of my knowledge and contains no willful falsifications or misrepresentations. Falsifications or misrepresentations will disqualify me from consideration for employment or, if hired, will be grounds for termination. I give my permission for you to contact my past employers for references.”

Other information you might want to have on your employment application includes the following:

- Equal Employment Opportunity (EEO) statement
- Affirmative Action Policy statement
- Requirements for I-9 documentation after hire

Job Application Inquiries

The Job Service Workforce Centers have a generic, legal job application that can be customized with your business name and address. Contact your local Job Service Workforce Center for assistance with customizing your job application.

Identification Can ask name (and if person has worked under other names), address, phone number, Social Security number, and type of work desired. Cannot ask questions indicating marital/family status or plans. Cannot ask for photograph.

Age Cannot ask questions indicating age, either directly or indirectly. Can ask if person is the minimum age legally required to perform the job.

Citizenship Ask only if U.S. citizenship is a bona fide requirement of the position. Can ask if person is eligible to work in the U.S.

National Origin Cannot ask any nationality, ancestry or native language questions. Can ask about foreign language fluency, **if** this is a requirement of the job.

Group Memberships Cannot ask questions regarding social or political groups. Can ask about membership in professional, trade or other job-related organizations.

Religion Cannot ask about religious affiliations or religious holidays observed.

Race Cannot ask questions about race or color (including hair and eye color).

Sex* Cannot ask anything about gender or gender preference.

Disabilities* Can ask questions (not phrased in terms of disability) about the ability to perform job-related functions. This includes asking applicant to describe or demonstrate, with or without reasonable accommodation, how he/she will perform job-related functions.

Arrests/Convictions Cannot ask about arrests, but can ask questions about felony and misdemeanor convictions, provided they relate to the job being applied for and the employer makes clear that a conviction is not an automatic disqualifier. (Factors such as age, time since offense, seriousness, nature of violation, and rehabilitation should be taken into account.)

Military Service* Only ask about military experience as it relates to the job applied for. Cannot ask about type of discharge, military reserve duty obligations, or disciplinary record while in the service.

Physical Requirements Cannot require applicants to take a medical or physical exam **before** hiring. Can require job-related physical agility test prior to hiring if all in that job classification are required to submit to the same test.

Job Experience Can ask questions about former employers including dates, jobs held, duties, skills, promotions, and reasons for leaving. Should include volunteer experience.

Education and Training Can ask questions about education and training, degrees and professional licenses only as they relate to the requirements of the job. Should not ask dates of attendance or graduation.

References Can ask for job or character references that are not discriminatory. Should ask for permission to contact references. Your best source of references are people who have actually supervised the applicant's work. *See reference check form in the Hiring Process section of this booklet.*

Licenses, Equipment and Tools Ask about only as relative to the job applied for.

Lie Detector/Drug Tests Cannot require, as a condition for employment, any person to take a mechanical lie detector test. Cannot require, as a condition for employment, any person to submit to a blood or urine test – except for employment in hazardous work environments, jobs primarily concerning security, public safety, fiduciary responsibility, or jobs involving commercial transportation.

***Employers actually providing affirmative action plans and data regarding minorities, females, disabled persons and military veterans can ask applicants to volunteer this information but should separate this information from the application hiring process.**

